

MARONEL BARAJAS (SBN 242044)  
MB@barajasriveralaw.com  
ANNA RIVERA (SBN 239601)  
AR@barajasriveralaw.com  
**BARAJAS & RIVERA, APC**  
1440 N. Harbor Blvd., Ste 900  
Fullerton, CA 92835  
Tel/Fax: (714) 443-0096

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

S.G., a minor, by and through his  
Guardian *ad litem* SHEILA  
ROSARIO FLORES GUTIERREZ

Plaintiff,

v.

TEHACHAPI UNIFIED SCHOOL  
DISTRICT; FRANCIS M. LYNCH,  
in his official capacity Tehachapi  
Unified School District  
Superintendent; KENDRA BAILEY;  
ELIZABETH SPODEN; and DOES  
1-10, INCLUSIVE

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE AND  
DECLARATORY RELIEF**

1. Americans with Disabilities Act  
(42 U.S.C. § 12132)
2. Section 504 of the Rehabilitation  
Act of 1973 (29 U.S.C. § 794)
3. Education Amendments Act,  
Title IX (20 U.S.C. §§ 1681-  
1688)
4. 14th Amendment, Equal  
Protection (42 U.S.C. §1983)
5. California Gov't Code § 11135
6. California Educ. Code §§ 200,  
201, 220, 230
7. California Gov't Code § 835
8. California Gov't Code § 815.6
9. Negligent Supervision
10. Negligence

**DEMAND FOR JURY TRIAL**

1 Plaintiff S.G. a minor by and through his parent and guardian *ad litem*, Sheila  
2 Rosario Flores Gutierrez (“S.G.” or “Plaintiff”) brings this action for damages and  
3 injunctive and declaratory relief against the Tehachapi Unified School District  
4 (“District” or “Tehachapi USD”), District Superintendent Francis M. Lynch, in his  
5 official capacity, Kendra Bailey, Principal of Golden Hills Elementary School, in  
6 her individual capacity, Elizabeth Spoden, Vice Principal of Golden Hills  
7 Elementary School, in her individual capacity, and DOES 1-10. Plaintiff alleges on  
8 information and belief as follows:

### 9 **INTRODUCTION**

10 1. Plaintiff S.G. is a six-year-old special needs child with permanent  
11 disabilities who was previously a student in the Tehachapi Unified School District.  
12 Prior to reaching the age of five, he was diagnosed with autism. The physical  
13 manifestations of this permanent disability—difficulty with, among other things,  
14 understanding and interpreting social cues, adaptive skills such as toileting, social  
15 interactions, communication, transitions, peer relationships—cause S.G. to stand  
16 out from similarly aged students and make him prone to being targeted by bullies.  
17 Further, S.G. has also been diagnosed with a speech and language disorder. As a  
18 result of his disabilities, S.G. has difficulty with, among other things,  
19 communicating and expressing himself. His speech can be difficult to understand.  
20 He also sounds younger than his age and, therefore, is often perceived to be  
21 younger than he is. S.G. is also of a smaller stature and often perceived as failing to  
22 conform to stereotypical notions of masculinity. Overall, the physical and social  
23 manifestations of his disabilities cause S.G. to stand out from other similarly-aged  
24 students and make him prone to being targeted by bullies.

25 2. Defendants are the Tehachapi Unified School District (“the District” or  
26 “Tehachapi USD”) and various school officials and staff at Golden Hills  
27 Elementary School (“Golden Hills”), a school within the District. This action  
28 pertains to Defendants’ grossly inadequate response to known incidents of severe,

1 pervasive, and offensive disability and gender-based peer-to-peer harassment  
2 endured by Plaintiff while attending Golden Hills as well its failure to maintain safe  
3 premises to S.G.'s detriment.

4 3. Because Defendants are entrusted with the safety and education of all  
5 students who attend their schools, the law imposes on them certain duties and  
6 obligations on Defendants regarding the safety of these students. For instance,  
7 whenever Defendants become aware of that a student is being harassed at school,  
8 they must take prompt and effective steps reasonably calculated to eliminate this  
9 harassment and the hostile environment that it creates. By taking these steps,  
10 Defendants help maintain a safe learning environment at school wherein students  
11 can focus on their education and develop healthy relationships with their peers.

12 4. Despite these duties and obligations, Defendants' response to the  
13 known disability and gender-based peer-to-peer harassment endured by S.G. at  
14 Golden Hills was to ignore, minimize, or dismiss it. Harassment and bullying in the  
15 form of insults, taunts, name-calling, threats, intimidation, and physical attacks thus  
16 became a relentless and inescapable aspect of S.G.'s school life at Golden Hills. At  
17 one point, a peer pushed S.G. off of a swing, which lead to head injuries; on a  
18 different day that same peer pushed S.G. off a slide, which led to S.G. being  
19 knocked unconscious and suffer a broken arm. And still Defendants did not  
20 investigate.

21 5. As a direct result of Defendants' deliberate indifference to this known  
22 disability and gender-based peer-to-peer harassment and failure to supervise or  
23 assist his disabilities, S.G. has suffered, and continues to suffer, physical, emotional  
24 and educational harm. Among other things, S.G. has been diagnosed with post-  
25 traumatic stress disorder (PTSD) and generalized anxiety disorder stemming from  
26 the peer-to-peer harassment and allegations contained herein and exhibits  
27 symptoms of severe anxiety, painful recollection of past peer-to-peer harassment,  
28 hypervigilance, avoidance, sadness, suicidal ideations, and depression.

1           6. Plaintiff has further been deprived of his right to equal access to  
2 educational benefits and opportunities provided by the District. The District has  
3 also engaged in an ongoing pattern and practice of denying Plaintiff reasonable  
4 accommodations for his disabilities, thereby preventing him from meaningfully  
5 accessing, participating, and receiving the benefits of the District's programs,  
6 services and activities, including the benefits of his education.

7           7. As a result of the Defendants' actions and inactions described herein,  
8 among other things, S.G.'s parents made the difficult decision to take him out of the  
9 District and place him temporarily at Acellus Academy, a private online school,  
10 until they could find a more appropriate placement. S.G. began attending Acellus  
11 Academy on or about February 28, 2024. He has since enrolled at Heartland  
12 Charter School, where he began the 2024-2025 school year and remains there. S.G.  
13 would seek to return the District if he felt safe to do so.

14           8. Although a special needs child will inevitably face many obstacles and  
15 challenges in life, a hostile learning environment at school that fosters a climate of  
16 fear and intimidation should not be one of them. Defendants had a duty to protect  
17 S.G., a young child, from disability and gender-based peer-to-peer harassment, yet  
18 deliberately failed to do so. Defendants also failed to adequately supervise him and  
19 his peers on unsafe playground conditions, resulting physical and emotional  
20 injuries.

21           9. Defendants' actions and inactions demonstrate, among other things,  
22 that the District does not conduct adequate education or training for its school  
23 officials, teachers, administrators, staff, and students regarding disability and  
24 gender-based peer-to-peer harassment of students. S.G. thus seeks declaratory and  
25 injunctive relief and damages to remedy Defendants' unlawful conduct.

26 //

27 //

28 //

## JURISDICTION AND VENUE

10. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§1331 and 1343. The same actions and omissions that form the basis of Plaintiff's federal claims form the basis of his California state law claims. Thus, this Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. Declarative relief is available pursuant to 20 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure.

11. Venue is proper in the Eastern District of California under 28 U.S.C. § 1391(b) because Plaintiff resides in, and Defendants operate and perform official duties in Kern County. A substantial part of the vents, acts, and omissions giving rise to claims also occurred in Kern County.

## PARTIES

### A. Plaintiff

12. Plaintiff, S.G. is a small six-year-old boy with disabilities currently in the first grade. He appears by and through his parent and guardian *ad litem* Mrs. Gutierrez.

13. Presently, and at all times relevant to this action, S.G. was and is a resident of Tehachapi, Kern County, California.

14. At the times of the events alleged herein, S.G. was a student at Golden Hills Elementary School ("Golden Hills") within the school district boundaries of the Tehachapi Unified School District.

15. Presently, and at all times relevant this action, S.G. was and is an individual with a disability within the meaning of all applicable federal and state disability non-discrimination laws. S.G. has diagnoses of autism, PTSD, and generalized anxiety. As a result of his autism, S.G. has difficulty with, among other things, understanding and interpreting social cues, adaptive skills such as toileting, social interactions, communication, transitions, peer relationships.

**B. Defendants**

***Tehachapi Unified School District***

16. Defendant Tehachapi USD is a public school district organized and existing under the laws of the State of California, with the capacity to sue and be sued. The District is sued in its own right and on the basis of the acts of its officials, agents, and employees, including those associated with Golden Hills Elementary School.

17. The District is located in Kern County.

18. The District is a public entity, including for purposes of the Title II of the ADA.

19. The District is a recipient of federal financial assistance such that it is subject to Section 504 of the Rehabilitation Act.

20. The District is a recipient of state assistance such that it is subject to California Government Code § 11135.

21. The District is the owner, operator, or lessor/lessee of Golden Hills Elementary School. It is responsible for promulgating policies and procedures for this school.

22. The District is sued in its own right and on the basis of the acts and/or omissions of its officials, agents and employees. Under law, including California Government Code § 815(a), the District is liable for the unlawful tortious acts hereinafter complained of, including those violating state law and committed by ant District entity or employee acting with the course and scope of their employment.

***Superintendent Francis M. Lynch***

23. Defendant Francis M. Lynch is the interim Superintendent of the Tehachapi USD. As Superintendent, Defendant Lynch has authority, oversight, and control of the District's schools and facilities, including the policies, practices, procedures, programs, trainings, activities, services and employees of said schools. Defendant Lynch is responsible for the daily operations of the District. He is also

1 responsible for ensuring that District schools and employees/staff comply with anti-  
2 discrimination laws, as well as for ensuring compliance with state and federal laws.

3 24. Defendant Francis M. Lynch is sued in his official capacity for  
4 prospective relief.

5 ***Kendra Bailey***

6 25. Defendant Kendra Bailey is the Principal of the Golden Hills  
7 Elementary School. As principal, Defendant Bailey has authority and control of  
8 Golden Hills' programs and facilities, including policies, practices, procedures,  
9 programs, activities, services, training, and employees of Golden Hills Elementary  
10 School. As principal, she is responsible for ensuring that the Golden Hills  
11 Elementary School complies with state and federal law.

12 26. Defendant Bailey directed and/or participated substantially in the  
13 events described herein against S.G. and/or knew of the acts of her subordinates and  
14 failed to act to prevent them as required by law. She is sued in her individual  
15 capacity for damages.

16 ***Elizabeth Spoden***

17 27. Defendant Elizabeth Spoden, is the Vice Principal of Golden Hills  
18 Elementary School. As vice principal, Defendant Spoden has authority and control  
19 of Golden Hills' programs and facilities, including policies, practices, procedures,  
20 programs, activities, services, training, and employees of Golden Hills Elementary  
21 School. As vice principal, she is responsible for ensuring that the Golden Hills  
22 Elementary School complies with state and federal law.

23 28. Defendant Spoden directed and/or participated substantially in the  
24 events described herein against S.G. and/or knew of the acts of her subordinates and  
25 failed to act to prevent them as required by law. She is sued in her individual  
26 capacity for damages.

27 //

28 //



***DOES 1-10***

29. The names and capacities, whether individual, corporate, otherwise, sued herein as DOES 1-10, inclusive, are presently unknown, and Plaintiff will amend the Complaint to insert them when ascertained. Plaintiff is informed and believe and thereon allege that each of these Defendants was a resident of this District and/or has principal offices or was doing business in this District and was and is responsible in some way for the events and damages alleged in this Complaint.

30. Plaintiff is informed and believes that each of the Defendants is the agent, ostensible, agent, alter ego, master, servant, trustor, trustee, employer, employee, representative, lessor, lessee, joint venture, parent, subsidiary, affiliate, related entity, partner and/or associate, or such similar capacity of each of the other Defendants, and was at all times, acting and performing, or failing to act or perform, within the course and scope of such similar aforementioned capacities, and with the authorization, consent, permission or ratification of each of the other Defendants, and is personally responsible in some matter for the acts and omissions of the other Defendants in proximately causing the violations and damages complained of herein, and have participated, directed, and have ostensibly and/or directly approved or ratified each of the acts or omissions of each of the other Defendants, as herein described.

31. Hereinafter, references to “Defendants” shall include Paragraphs 16-30, inclusive, above.

**PLAINTIFF COMPLIED WITH GOVERNMENT CLAIM REQUIREMENT**

***(with respect to damages under California State law)***

32. Plaintiff complied with California Government Claims Act (also known as the Tort Claims Act), California Government Code § 900 *et seq.* On or about April 21, 2024, Plaintiff filed an administrative tort claim pursuant to California Government Code § 910 *et seq.* with Defendant Tehachapi USD.



1 Plaintiff's claim stated that the claim was timely as to all events but also included  
2 an application for leave to file a late claim, to the extent any such claims were  
3 required.

4 33. On or about May 9, 2024, Defendant Tehachapi USD provided a  
5 written letter directing Plaintiff to file an application for late claim pursuant to  
6 California Government Code § 946.6. Plaintiff again filed an application for late  
7 claim along with his tort claim with the Tehachapi Unified School District on or  
8 about July 30, 2024. On August 23, 2024, Tehachapi USD by way of letter,  
9 accepted his late claim application in part.

10 34. Plaintiff has thus complied with the requirements of Government Code  
11 Section 910 *et seq.*

## 12 **STATEMENT OF FACTS**

### 13 ***Facts Regarding Plaintiff S.G.***

14 35. Before the age of five, Plaintiff S.G. was diagnosed with autism. As a  
15 result of this permanent disability, S.G. has numerous physical and other  
16 limitations, including: he has difficulty with understanding and interpreting social  
17 cues, social interactions, communication, transitions, adaptive skills such as  
18 toileting, and peer relationships. S.G. has also been diagnosed with a speech and  
19 language disorder. As a result of his language disorders and autism, he has  
20 difficulty with speech and expressing himself and tends to sound younger than his  
21 age. Among other things, the physical and social manifestations of his disabilities  
22 cause S.G. to stand out from other similarly aged students and make him prone to  
23 being targeted by bullies, being perceived as younger than his age, and as failing to  
24 conform to stereotypical notions of masculinity.

25 36. Further, as a result of his disabilities, S.G. also had difficulty with  
26 adaptive skills such as with toileting, which only worsened while at Golden Hills  
27 Elementary School and as the result of the facts alleged herein.

28 //

37. S.G.'s parents primarily speak Spanish. Accordingly, effective communication with S.G.'s parents require the use of interpreters.

38. S.G.'s physical and other disability-related limitations make him an easy target for bullies because, among other things, it creates a power imbalance between S.G. and his peers that bullies can use to intimidate, threaten, and harass him.

***Tehachapi Unified School District/Golden Hills Elementary School***

39. In the fall of 2021, S.G. began attending school in the Tehachapi USD. In the fall of 2021, the District determined that S.G. was eligible for special education services under the category for speech and language impairment and thereafter provided S.G. with an Individualized Education Program ("IEP").<sup>1</sup>

40. S.G. attended Golden Hills Elementary School ("Golden Hills"), a school in the District, from approximately August 2022 until he was effectively forced to leave the District in approximately the end of February 2024.

***2022-2023 School Year***

41. During the 2022-2023 school year, S.G. was harassed on the basis of disability and gender by his peers at Golden Hills.

42. Shortly after the 2022-2023 school year at Golden Hills began, J., S.G.'s classmate (last name unknown), began harass and bullying S.G. based on his disabilities and perceived gender on a daily or nearly daily basis. J. made fun of and taunted S.G. by highlighting his disability-related difficulties with communication, toileting, and social interactions, including by yelling, "What are you saying, We can't understand you," "You talk like a baby," "You're a baby," "You don't know

---

<sup>1</sup> Through this complaint, S.G. does not challenge the adequacy of his Individualized Education Program (IEP) or allege Defendants violated the Individuals with Disabilities Education Act (IDEA). All references to his IEP, IEP team meetings, or special education classroom herein are for background purposes, e.g., to support his status as a qualified individual with disabilities, establish Defendants' knowledge of his disabilities, and provide evidence that Defendants discriminated against him on the basis of his disability-related behaviors.

1 how to talk”, “You’re stupid,” and “You cry like a baby.” J. also taunted him based  
2 on his perceived gender by calling S.G. names like “You look like a girl.”

3 43. J. also routinely intimidated, bothered, and threatened S.G. by  
4 following him and doing things to intentionally upset him.

5 44. Based on information and belief, Amandina Vidal (hereinafter “Ms.  
6 Vidal”), S.G.’s special education teacher and case carrier, personally observed  
7 much of this peer-to-peer harassment and bullying throughout the school year but  
8 failed to inform S.G.’s parents that S.G. was being bullied by J. or to take any steps  
9 reasonably calculated to end the bullying.

10 45. Notwithstanding the above, on or around mid-November or early  
11 December 2022, Mrs. Gutierrez informed Ms. Vidal that S.G. told her that he was  
12 being bullied by a student named J., who would taunt him and say things like, “You  
13 talk like a baby,” “You look like a baby,” “You cry like a baby,” and “You look  
14 like a girl.” Ms. Vidal said she would separate S.G. and J., including by placing  
15 them at different tables. It’s unclear whether the two were separated since the  
16 harassment and bullying continued unabated. Mrs. Gutierrez would talk to Ms.  
17 Vidal several more times about the bullying.

18 46. After the winter holiday break, J.’s harassment of S.G. escalated. J.  
19 started to physically hit S.G.

20 47. For example, around January 10, 2023, J. punched S.G. in the stomach  
21 on the playground. Neither Ms. Vidal nor any other school employee at Golden  
22 Hills informed S.G.’s parents about this incident. Instead, Plaintiff’s parents learned  
23 of the incident from S.G. himself on their drive home from school later that day.  
24 S.G.’s parents immediately drove back to school to speak with Ms. Vidal about this  
25 incident. Ms. Vidal stated that she had not witnessed the incident and perhaps it  
26 could have occurred when she was not looking and that she would speak with J. and  
27 S.G. and ask J. to ask for forgiveness and that perhaps this could even lead to a  
28 friendship, or words to that effect. Ms. Vidal also told Mrs. Gutierrez that if the

1 harassment continued, she would request a meeting with J. and his parents. Despite  
2 these statements, Ms. Vidal went on to say that she did not believe that J. was  
3 hitting S.G. and that they were just being kids, admitting at the same time however  
4 that she was not supervising the whole time so she could not determine if it had  
5 actually occurred.

6 48. S.G. continued to be harassed at school by J.; S.G.'s parents repeatedly  
7 and continually expressed their concern to Ms. Vidal regarding the ongoing  
8 bullying and harassment. Ms. Vidal, however, refused to meaningfully address  
9 parents' concerns and would minimize or downplay the bullying saying things like  
10 maybe S.G. and J. were just playing rough or words to that effect.

11 49. J. continued to harass S.G. both physically and verbally. For instance,  
12 his nearly daily taunts of calling him a "You talk like a baby," "Why can't you talk  
13 like us?" "You talk like a girl" or a "crybaby" also started making fun of his hair  
14 that had been dyed blue, stating that "only girls dye their hair; you look like a girl."  
15 S.G, among other things, asked his mother, Mrs. Gutierrez, to cut his hair shorter in  
16 a more traditional masculine style, which she did in February 2023. S.G. told his  
17 mother that he would never let his hair grow out anymore.

18 50. Ignored by Ms. Vidal, Mrs. Gutierrez reported the ongoing incidents of  
19 harassment to Golden Hills' principal, Kendra Bailey (hereinafter "Defendant  
20 Principal Bailey"), on several occasions. For example, in or around March 2023,  
21 Mrs. Gutierrez met with Principal Bailey in the morning after dropping S.G. off at  
22 school, S.G.'s father was also present. Principal Bailey informed S.G.'s parents that  
23 she only had a few minutes because she was busy. Mrs. Gutierrez told Principal  
24 Bailey that J. was verbally harassing and physically hitting S.G. on daily and near  
25 daily basis, both in class and during lunch. Principal Bailey told Mrs. Gutierrez that  
26 she would speak with Ms. Vidal and that she would fix things and make them  
27 better. Principal Bailey also told Mrs. Gutierrez, "Don't worry too much; they are  
28 just kids," or words to that effect. Mrs. Gutierrez also informed Principal Bailey

1 that Ms. Vidal had claimed that she would be moving S.G. and J to different tables  
2 in class; Principal Bailey informed Mrs. Gutierrez that she would make sure that  
3 that occurred.

4 51. Shortly after this meeting, while it seemed that the harassment and  
5 bullying incidents during class subsided, during non-classroom hours, J. continued  
6 to harass and bully S.G. on a nearly daily basis.

7 52. Around May 2023, when picking S.G. up from school one day, S.G.'s  
8 father found S.G., eyes swollen and teary. When asked what happened, S.G. said  
9 that J. had bullied him and punched him in the stomach during recess after he  
10 finished his lunch. S.G.'s father immediately reported this to Ms. Vidal. Ms. Vidal  
11 dismissively stated that she had not seen it and claimed that S.G. had had a normal  
12 day. S.G.'s father insisted that S.G. is not a liar, and Ms. Vidal retorted that she was  
13 not a liar either. At that point, Ms. Vidal turned to S.G. and told him, "Don't lie," or  
14 words to that effect. S.G., crying, told Ms. Vidal that he was not lying. S.G.'s  
15 father, seeing his son in distress, left with S.G. During this interaction, Ms. Vidal  
16 was visibly upset, including raising her voice.

17 53. Rather than address the persistent and ongoing bullying and  
18 harassment, Ms. Vidal accused S.G. of lying without any evidence to support this  
19 accusation. Defendants continued to do essentially nothing in response to J. hitting  
20 S.G., instead unreasonably allowing the bullying, discrimination, and harassment to  
21 continue.

22 54. On or around the end of May 2023, Mrs. Gutierrez also informed  
23 Principal Bailey that J. had punched S.G. in the stomach. J. Principal Bailey stated  
24 that she would speak with S.G.'s teacher and said, "Don't worry, we're at the end  
25 of the year, and maybe S.G. won't see [him] next year," or words to that effect.  
26 Principal Bailey never communicated with S.G.'s parents again about the incident.  
27 This inaction and refusal to address the incidents of harassment created and  
28 encouraged a hostile learning environment for S.G.

1           55. The bullying and harassment persisted through the end of the school  
2 year. Without any meaningful action from Defendants', S.G.'s parents told S.G. to  
3 try stay as far away from J. as much as possible.

4           56. As a result of the constant harassment and bullying, S.G. suffered  
5 physically and emotional injury. For instance, he became of afraid of going to  
6 school and also began asking his parents if they could pick him up early because he  
7 was scared that J. would hit him during lunchtime.

8 ***2023-2024 School Year***

9           57. S.G. continued to attend school at Golden Hills for the 2023-2024  
10 school year. He was in kindergarten.

11           58. The school year began in August 2023. Even though J. and S.G. were  
12 no longer in the same class, J.'s harassment of S.G. continued. For instance, J.  
13 persisted in taunting S.G., stating that he acts and looks like a girl, sounds and talks  
14 like a baby, calling him stupid, and derogatorily referring to him as "gay." J. also  
15 continued to hit and push S.G. The bullying continued on a near-daily basis. S.G.'s  
16 parents saw his demeanor change. He began wetting his bed and having difficulty  
17 sleeping. He also expressed that he did not want to go to school.

18           59. Towards the end of August and at least twice in September 2023, Mrs.  
19 Gutierrez spoke with S.G.'s then-teacher Marlee Juergens ("Ms. Juergens"). Mrs.  
20 Gutierrez explained to Ms. Juergens that S.G. informed her that J. was still calling  
21 him "gay," that J. was taunting S.G. by claiming that S.G. did not know how to  
22 speak and that he sounded like a baby, and was a girl, among other things. Ms.  
23 Juergens claimed that this was not happening in class and that everyone liked S.G.  
24 She also stated that she could not watch S.G. all the time during lunch and recess.  
25 Mrs. Gutierrez also informed Ms. Juergens that on one occasion S.G. informed her  
26 that J. had followed him to the restroom and pushed him by the buttocks. Ms.  
27 Juergens told Mrs. Gutierrez that she would speak with S.G. Ms. Juergens also  
28 acknowledged that S.G. was distracted in class.

1           60. Mrs. Gutierrez continued to express her concerns to Defendants about  
2 the physical and verbal harassment that S.G. was experiencing at the hands of J.,  
3 without any meaningful response. For example, Mrs. Gutierrez went to the front  
4 office at Golden Hills several times and asked the secretary if she could speak with  
5 Principal Bailey but each time was told that Principal Bailey was too busy and/or  
6 was in meetings. Mrs. Gutierrez also called Golden Hills' front office by telephone  
7 to ask if she could have a meeting with Principal Bailey and was asked to explain  
8 the purpose of the request because Principal Bailey was busy. Mrs. Gutierrez  
9 explained that J. was harassing S.G., both verbally and physically, and explained in  
10 detail what had been occurring and that she had discussed these concerns with his  
11 teachers and others at the District. The front office staff person told Mrs. Gutierrez  
12 that she would inform Principal Bailey and told Mrs. Gutierrez to wait for a call.

13           61. Mrs. Gutierrez waited a few days but did not receive a call back. As  
14 such, on or around October 19, 2023, she went to speak with Ms. Juergens again.  
15 Ms. Juergens asked Mrs. Gutierrez to follow her, and she took Mrs. Gutierrez and  
16 S.G. to Vice Principal Elizabeth Spoden's ("Vice Principal Spoden") office. Mrs.  
17 Gutierrez reported that J. was harassing S.G. both verbally and physically and  
18 provided specific details. After Mrs. Gutierrez described all of the events that had  
19 been occurring, Vice Principal Spoden started to question S.G. directly. Vice  
20 Principal Spoden asked S.G., "Does he bully you every day, every single day? Or  
21 every other day," or words to that effect. S.G. responded that he was bullied "every  
22 day." Vice Principal Spoden then showed S.G. three pictures on her computer and  
23 asked S.G. "Do you remember who J. is?" or words to that effect. S.G. said that he  
24 did, and then he pointed to J. in the picture. After S.G. identified J., Vice Principal  
25 Spoden told S.G., "When something happens to you, you can come and talk to us,  
26 you can talk to me, or come to the office and let us know that way we can do  
27 something," or words to that effect. S.G. simply said, "ok." Vice Principal Spoden  
28 told Mrs. Gutierrez that she would talk to J. and that the situation would be resolved



1 and that it would not occur again. Vice Principal Spoden also told Mrs. Gutierrez  
2 that she would let her know what she found.

3 62. Just a few days later, on October 23, 2023, J.'s harassment of S.G.  
4 escalated. That day, J. pushed S.G. off a swing on the upper grade playground while  
5 calling him a crybaby, and saying You're a little girl. S.G. injured his head and was  
6 left with visible bruises and emotional injuries.

7 63. No adult witnessed the event nor was any adult nearby. S.G. had to  
8 look for an adult to assist him. When he found an adult with whom he was not  
9 familiar, he attempted to explain that he had been pushed off the swing. S.G.  
10 reported to his parents that the adult could not understand him. This adult took him  
11 to the nurse's office. S.G. also informed the nurse that J. had pushed him off the  
12 swing. The school nurse called Mrs. Gutierrez and reported that S.G. had a small  
13 accident and had fallen off the swing. She did not tell Mrs. Gutierrez that J. had  
14 pushed him off the swing. The school nurse also told Mrs. Gutierrez that S.G. was  
15 fine, that he was in the office and that they were going to wait to see if S.G. wanted  
16 to stay at school. Mrs. Gutierrez also spoke with S.G. during this call; crying, he  
17 told his mother that J. pushed him off of the swing. Mrs. Gutierrez informed the  
18 school nurse that she wanted to speak with the adult who had taken S.G. to the  
19 office. The nurse told Mrs. Gutierrez that she would have the front desk office call  
20 the adult so that when Mrs. Gutierrez arrived to pick up her son she could speak  
21 with them. Mrs. Gutierrez left to pick S.G. up from school.

22 64. While on her way to pick up her son, the nurse called Mrs. Gutierrez  
23 back to inform her that S.G. reported that had a severe headache. Mrs. Gutierrez  
24 told the nurse that she was already on her way.

25 65. When Mrs. Gutierrez arrived to pick up S.G., she went to the main  
26 office and explained that she was there to pick S.G. up who was in the nurse's  
27 office. Mrs. Gutierrez then walked into the nurse's office. Mrs. Gutierrez spoke  
28 with S.G. again and asked him what had happened. He said that he had been on the

1 swings in the upper-grade playground and that J. had pushed him off of the swing.  
2 Mrs. Gutierrez was not aware that kindergartners, like S.G., were permitted to play  
3 on the upper-grade playground. She believed that S.G. was limited to playing in the  
4 kindergarten playground, which is surrounded by a fence.

5 66. Mrs. Gutierrez asked the school nurse what had happened and  
6 expressed her concern as to why S.G. was not on the kindergarten playground and  
7 why no adult had witnessed the incident. The nurse explained that she could not  
8 answer the question about the playground. The nurse reported that there were staff  
9 members who were supposed to be supervising the playground, but that they did  
10 not have enough people to watch all of the students, and so they had to turn in all  
11 directions and were not looking in S.G.'s direction when the incident occurred.  
12 Mrs. Gutierrez felt that the school nurse did not take the situation seriously.

13 67. Despite her request to speak to the unknown adult who had walked  
14 S.G. to the office, that person was not present. The District did not provide S.G.'s  
15 parents with an incident report.

16 68. After this incident, Mrs. Gutierrez called the Golden Hills office  
17 several times and request to speak to Principal Bailey or Vice Principal Spoden to  
18 talk about the ongoing harassment and bullying but she never received a call back.

19 69. On October 26, 2023, the harassment became even worse. During  
20 recess, while playing in the upper-grade playground, J. pushed S.G. from the top of  
21 a slide. S.G. heard J. tell him, "Bye-bye you're going to fly," or words to that effect  
22 before J. pushed him. S.G. flew off the top of the slide for several feet and landed  
23 directly on the hard ground below.

24 70. S.G. sustained severe injuries including that he was knocked  
25 unconscious and broke his arm. Another student witnessed the event. No school  
26 staff noticed that he had been pushed off the slide or that he was unconscious.

27 71. After an unknown period of time, S.G. regained consciousness. He  
28 was laying on the ground and in a lot of pain. He began screaming and crying but

1 no one heard him. Still crying, S.G. got up and began searching for help.

2 72. Another student heard and/or saw S.G and walked with him towards  
3 the office. Only once they were near the office did they encounter an adult, whom  
4 S.G. did not recognize. The fellow student left and the adult finished walking him  
5 to the office.

6 73. Mrs. Gutierrez received a call from the school nurse asking her to pick  
7 S.G. up because he had an accident on the playground. The nurse told Mrs.  
8 Gutierrez that it was not an emergency. Mrs. Gutierrez asked for information about  
9 what had happened, but the nurse told her that she did not know anything more  
10 about what had happened. A few minutes later, the nurse called Mrs. Gutierrez back  
11 and asked if she was already on her way. Mrs. Gutierrez told her that she was about  
12 to enter the school's parking lot. This time the nurse told Mrs. Gutierrez that it was  
13 an emergency, that she had her two other daughters with her in the office, and that  
14 she needed to take S.G. to the emergency room. Mrs. Gutierrez asked why it was an  
15 emergency. It was only then that the nurse then told Mrs. Gutierrez that S.G. had  
16 fallen off the slide but that she did not have any other information. Mrs. Gutierrez  
17 also requested that the school provide her with an incident report of what had  
18 happened that day.

19 74. While Mrs. Gutierrez waited in the car, including because she was  
20 experiencing hip pain, S.G.'s grandmother and father went to the office to pick up  
21 S.G. S.G. grandmother overheard the nurse say "shut up" as there were lots of  
22 screaming coming from S.G. and his sister (S.G.'s sister also has autism and tends  
23 to mimic). S.G.'s grandmother believes that the school nurse directed that comment  
24 to S.G. and his sisters. Unable to communicate effectively with the nurse, and  
25 concerned about S.G.'s well-being, S.G.'s grandmother and father left and  
26 immediately took S.G. to the emergency room.

27 75. On the drive to the emergency room, S.G. was pale, screaming, crying,  
28 and fainted twice presumably from pain. He also complained that his head, his

1 fingers and elbow hurt. At the emergency room, Mrs. Gutierrez was informed that  
2 S.G. had, among other things, a contusion on his head, back and ribs.

3 76. S.G. was sent home with pain medication but he continued to  
4 experience severe pain and emotional distress. The next day, among other things,  
5 S.G. had a fever and was vomiting.

6 77. On October 28, 2023, concerned about S.G.'s continued pain and new  
7 symptoms, his parent took him to the emergency room at Loma Linda Children's  
8 Hospital. There, he received, among other things, additional X-rays, which revealed  
9 that he had a closed fracture of the proximal end of his right humerus. His arm was  
10 put in a partial cast. Among other things, Mrs. Gutierrez was told S.G. could not  
11 engage in physical activity until at least December 10, 2023. S.G. remained in a  
12 partial cast for approximately six weeks due to his injuries. He developed several  
13 sores on his arm because of the cast. He was also in pain from contusions on his  
14 head and his ribs as a result of J. pushing him off the slide. S.G. continues to  
15 experience pain when engaged in physical activities and when it is cold outside.

16 78. On October 30, 2023, Mrs. Gutierrez and S.G. went to the office to  
17 speak with Principal Bailey about the ongoing bullying. The front office informed  
18 Mrs. Flores that Principal Bailey was busy and instead directed her to speak with  
19 Vice Principal Spoden. S.G. told Vice Principal Spoden that he is bullied every day  
20 by J. and that J. pushed him off the swing and the slide. Again Vice Principal  
21 Spoden asked S.G. to identify who was harassing him. S.G. again identified J., in a  
22 set of pictures provided by Vice Principal Spoden, as the person who bullied him.  
23 Vice Principal Spoden questioned S.G. several times, asking if he was sure if J. was  
24 the person who was harassing him. He unhesitatingly repeated that J. was the  
25 person who had bullied him. Mrs. Gutierrez also gave Vice Principal Spoden the  
26 name of the child, D. (last name unknown), who had witnessed the incident on the  
27 slide. Vice Principal Spoden said that she would speak with D. and all of the  
28 students in S.G.'s classroom to see if they had witnessed what had happened on the

1 slide because no adult had witnessed what had occurred. Vice Principal Spoden said  
2 that once someone who could clarify what had happened that she would then speak  
3 with J. And that if J. had pushed S.G. off the slide that there would be consequences  
4 for him. Vice Principal Spoden also stated that they had a program in which J. and  
5 S.G. could participate wherein J. could ask for forgiveness and maybe the two  
6 could end up as friends. Concerned for S.G.'s safety, including his physical and  
7 mental well-being Mrs. Gutierrez stated that she needed additional time to consider  
8 this program. District staff did not follow up with Mrs. Gutierrez about this  
9 program.

10 79. Mrs. Gutierrez also asked Vice Principal Spoden why S.G. in the  
11 upper-playground where the slides were larger much farther from the ground than  
12 in the kindergarten playground. Vice Principal Spoden said the school staff allow  
13 kindergartners to play in the upper-playground because they wanted the  
14 kindergartners to better prepare them for first grade. Mrs. Gutierrez asked why S.G.  
15 and other kindergartners were not being supervised when they were in the more  
16 dangerous playground. Vice Principal Spoden informed her that there was not  
17 enough staff to watch all the students.

18 80. On October 31, 2023, Vice Principal Spoden called Mrs. Gutierrez.  
19 Vice Principal Spoden reported that no further action could be taken because no one  
20 saw the incident on the slide but that they would remain vigilant in case something  
21 else occurred. Mrs. Gutierrez pointed out that D. had witnessed J. pushed S.G. off  
22 the slide, but Vice Principal Spoden said that when she spoke with the student that  
23 he claimed that he had not witnessed S.G. being pushed off the slide. Vice Principal  
24 Spoden also stated to Mrs. Gutierrez that it could not have been J. that pushed S.G.  
25 off the slide because J. had been asleep all day in his class.<sup>2</sup> Mrs. Gutierrez asked  
26

---

27  
28 <sup>2</sup> Later the District's alleged investigation would contradict this assertion. In the District's  
investigation, it was noted that student reported that he witnessed S.G. being pushed off the slide.

1 Vice Principal Spoden to speak with D. again individually. Vice Principal Spoden  
2 agreed.

3 81. A few hours later, Vice Principal Spoden called Mrs. Gutierrez that  
4 she had spoken with D. and that he told her that he could not remember. The  
5 District took no further action to stop or address the bullying.

6 82. On or about November 2023, Tae Mauk, Direct of Special Education  
7 (“Mr. Mauk”) called Mrs. Gutierrez and asked for a meeting at Golden Hills.  
8 During this meeting, Mr. Mauk, Principal Bailey, and S.G.’s parents were present.  
9 S.G.’s parents, among other things, explained the physical and verbal harassment  
10 that J. inflicted on S.G. Mr. Mauk claimed that he would have someone watch S.G.  
11 more closely so that they would “not hurt him again,” or words to that effect. Yet  
12 the bullying and harassment continued.

13 83. Mrs. Gutierrez also continued to express her concerns about J. bullying  
14 S.G. to Ms. Juergens. In response, however, Ms. Juergens would simply say that  
15 S.G. was a joy in her classroom and that the students in her class missed S.G. Ms.  
16 Juergens dismissed her concerns, did not investigate the allegations of bullying, and  
17 did not offer any other support for S.G.

18 84. J. continued to physically and verbally bully S.G.; J.’s friends would  
19 often laugh at S.G. during these incidents. S.G. continued to suffer emotionally and  
20 physically and started to have increased absences at school.

21 85. Meanwhile S.G.’s parents continued to express their concerns about  
22 the ongoing physical and verbal bullying that S.G. was enduring on a near daily  
23 basis, but to no avail. Mrs. Guterrez explained to the school staff that S.G. was  
24 missing school because of his mental health that was a result of the bullying, but the  
25 District and its staff continued to do little to nothing to address the bullying.

26 86. Around January 2024, S.G. began private therapy to address the  
27 negative effects on his mental health from the ongoing bullying, harassment, and  
28 discrimination. Cynthia Smith, Licensed Therapist with College Community

1 Services in Tehachapi, diagnosed S.G. with PTSD and generalized anxiety disorder  
2 and recommended that he change schools. She also confirmed his previous autism  
3 diagnosis. S.G. continued to receive therapy from Miguel Dorador, Recovery  
4 Coordinator at College Community Services.

5 87. On or around January 17, 2024, in the morning when Mrs. Gutierrez  
6 brought S.G. to school, he had an anxiety attack outside the Golden Hills front  
7 office and began screaming that the bully was going to hurt him. Mrs. Gutierrez  
8 then managed to get S.G. to enter the office where she asked for assistance. The  
9 two women in the front desk told Mrs. Gutierrez that the school had trained staff  
10 who could support S.G. But when Mrs. Gutierrez stayed a little longer to see what  
11 would happen, she witnessed two individuals essentially drag S.G. by his arms to  
12 the classroom while he continued to scream. Mrs. Gutierrez complained, but in  
13 response the school staff in the office said that this was their typical way of  
14 handling situations like this, that she should not be alarmed by this situation, and  
15 that S.G. would be fine. After this, the office staff told Mrs. Gutierrez that “[she]  
16 could leave now.”

17 88. The same day of the panic attack, when S.G. came back home, he  
18 smelled of urine. Mrs. Gutierrez discovered he had had a major toileting accident at  
19 school, but no reported it to her. S.G. reported to his parents that he had started to  
20 avoid going to the restroom at school because he was scared that J. would hurt him.

21 89. On January 23, 2024, Mrs. Gutierrez emailed Principal Bailey and  
22 informed her that S.G. was very traumatized because the District refused to address  
23 the bullying and that he was now suffering from, among other things, anxiety  
24 attacks. That same day, Principal Bailey responded via email and requested among  
25 other things a meeting to discuss Mrs. Gutierrez’s concerns and highlighted the  
26 need for more information about the bullying claiming that no specific incidents  
27 had been reported.  
28



1           90. The next day, on January 24, 2024, Principal Bailey called Mrs.  
2 Gutierrez. Mrs. Gutierrez understood from their conversation that Principal Bailey  
3 did not believe that any bullying had occurred, in part because Principal Bailey  
4 reported that bullying involves one child being much older in age or bigger in size,  
5 that kindergarteners just naturally play rough, and that what S.G. had endured was  
6 normal childhood interactions that do not require intervention. Principal Bailey  
7 offered no plan to investigate or otherwise appropriately address the bullying or  
8 address S.G.'s deteriorating physical and mental health. Instead, Principal Bailey  
9 suggested that S.G. change schools. During this call, Mrs. Gutierrez also informed  
10 Principal Bailey that, among other things, S.G. had been diagnosed with PTSD and  
11 S.G.'s therapist recommended that S.G. needed a new school placement because the  
12 District refused to effectively address the peer-to-peer harassment. Principal Bailey  
13 repeated that she did not believe that it was bullying and minimized what had  
14 occurred to S.G.

15           91. On January 27, 2024, Mrs. Gutierrez wrote an email to Principal  
16 Bailey to confirm her understanding of their conversation. Principal Bailey  
17 responded to Mrs. Guterrez on January 28, 2024 via email wherein Principal  
18 Bailey confirmed that the standards of bullying were as she defined them in the call  
19 but denied saying that S.G. was not being bullied. Principal Bailey further stated  
20 that the school was willing to offer help in the general sense but did not provide a  
21 specific plan to address the bullying. She also opined that S.G.'s anxiety might  
22 instead be the result of his absences because "after many days of absences, young  
23 students often have anxiety returning to school. S.G. has missed many days of  
24 school, so it could be contributing to his feelings." In a subsequent email, Principal  
25 Bailey stated that the District had investigated Mrs. Gutierrez's concerns but that  
26 investigation that the other student was involved[.]"

27           92. In the meantime, among other things, S.G.'s physical and mental  
28 health continued to decline. S.G. expressed suicidal thoughts and told his mother

1 that he thought the school personnel were treating him in a hostile manner. In  
2 addition, he began to suffer extreme gastrointestinal distress because of the  
3 bullying.

4 93. On February 22, 2024, S.G.'s parents had an in-person meeting at  
5 Golden Hills with Principal Bailey, Vice Principal Spoden, Ms. Juergens, and  
6 Maria (an interpreter). At the meeting, Principal Bailey denied that S.G. was being  
7 bullied and minimized what S.G. had been enduring. For example, Principal Bailey  
8 stated that kindergarteners had bad memories and that "[she] could not even  
9 remember what she ate in the morning and how could S.G. remember what  
10 happened days before," or words to that effect. Further, when Mrs. Gutierrez  
11 informed them that S.G. had been diagnosed with PTSD, Principal Bailey laughed  
12 at Mrs. Gutierrez and said, "Oh my God I can't believe that a six-year-old knows  
13 what PTSD is, I'm 50 years old and I have PTSD," or words that effect. Mr.  
14 Gutierrez also informed them that S.G. had suicidal ideations. Principal Bailey  
15 simply stated, "oh no." And Ms. Juergens stated that, "He is such a good kid and  
16 with a good heart. Tell him not to think that," or words to that effect. S.G.'s parents  
17 also reported that S.G. had more toileting accidents because of the bullying and  
18 harassment. For example, Mrs. Gutierrez informed them that in addition to the  
19 school toileting accidents, he was also having more toileting accidents at night.  
20 Principal Bailey responded that "five year old kids still have accidents at that age  
21 and that it was very normal," or words to that effect.

22 94. During this same meeting, Mrs. Gutierrez again reported that bullying  
23 is a general problem at Golden Hills. She pointed out that she has two other  
24 children in the school who also have autism and who are also constantly bullied.  
25 Principal Bailey denied that were being bullied. Rather, instead of looking into this  
26 further, Principal Bailey stated that Mrs. Gutierrez' children were "too soft" and  
27 that they needed to "toughen up" because the "world is cruel," or words to that  
28 effect. Principal Bailey offered no meaningful options or plan that would keep S.G.

1 safe while at school. For example, Mrs. Gutierrez asked about home hospital  
2 instruction, but was told that he could not get his IEP services during home  
3 hospital. Mrs. Gutierrez then informed Principal Bailey that she would have to  
4 withdraw S.G. from the District given the bullying and trauma that he has endured  
5 and lack of plan to stop it.

6 95. S.G. also started to have increased absences at school. Rather than  
7 address the root cause of the problem, the peer-to-peer harassment, the District  
8 responded by sending home threatening letters about his absences.

9 96. S.G.'s parents were forced to make the difficult decision to take him  
10 out of the District altogether to ensure his safety and any possible chance of  
11 learning. They placed him at Accelus Academy near the end of February 2024, a  
12 private online school, until they could find a more appropriate placement.

### 13 **2024-2025 School Year**

14 97. On or about August 13, 2024, S.G. began attending Heartland Charter  
15 School in Kern County. This program has both an online and in person  
16 components. While he is not being bullied anymore, S.G. remains traumatized over  
17 what happened while at Golden Hills Elementary School.

18 98. S.G. is the victim, *inter alia*, of an ongoing pattern and practice of the  
19 Defendants failing to appropriately address the significant verbal and physical  
20 harassment that he has endured while a student at Golden Hills. This pattern and  
21 practice of neglect and failure to accommodate S.G.'s needs as a student with  
22 disabilities is sufficiently severe and pervasive to, among other things, constitute  
23 intentional discrimination against S.G. and create an unsafe and hostile learning  
24 environment. As discussed herein, J. has repeatedly bullied S.G., including taunting  
25 him on the basis of disability and perceived gender, on a near daily basis and has  
26 physically assaulted him several times. Defendants have failed to, among other  
27 things, provide an adequate play structure, supervision, oversight, and training of  
28 employees to ensure that students like S.G. are not injured or bullied and that any

1 injuries are quickly identified, investigated, and prevented in the future.

2 Defendants' did not report the abuse that S.G. was experiencing to his parents.

3 99. As a direct and proximate result of Defendants' actions and inactions,  
4 S.G. has suffered and continues to suffer from severe physical, psychological, and  
5 emotional harm. He has also suffered the loss of educational opportunities and  
6 future income and loss of civil rights. Among other things, S.G. suffered and  
7 continues to suffer physical pain, embarrassment, and extreme emotional distress.  
8 S.G. has had and continues to have suicidal ideations, PTSD, toileting accidents,  
9 nightmares, generalized anxiety, panic attacks, trouble sleeping and eating,  
10 experienced significant bouts of vomiting and diarrhea, and has withdrawn from  
11 doing things that he previously enjoyed and does not trust other children.

12 100. S.G. must now also take medication for anxiety and depression, and as  
13 discussed herein, in January 2024, S.G. was diagnosed with PTSD and generalized  
14 anxiety disorder. S.G. has been prescribed therapy sessions to help him deal with  
15 his PTSD and anxiety and continues to attend these sessions. He also has painful  
16 recollections of the slide and swing incidents and being dragged by school staff. He  
17 wakes up screaming in the night crying, "Tell my bully to stop hitting me." He  
18 continues to live in fear of J. He has also regressed socially, academically, and  
19 emotionally. In addition, while S.G. has had toileting issues since he began school,  
20 his frequency of toileting accidents tripled after he was assaulted on the slide in  
21 October 2023. However, the District declined to do anything to help S.G. with his  
22 toileting needs during his time at school- not even to change his clothes.

23 101. Additionally, S.G. has been and continues to be excluded and deprived  
24 from having equal and/or meaningful access to the programs, services, and  
25 activities offered by Defendants. Defendants' acts and omissions are ongoing as  
26 S.G. has been unable to return to school; they constitute a continuing violation of  
27 S.G.'s rights, for which Defendants' are liable.  
28

102. Further, S.G. is also the victim of the District's failure to properly train its staff to effectively address school bullying for students like S.G. and has also failed to maintain safe premises, to properly supervise S.G., or to warn, train, or investigate incidents of bullying and peer-to-peer harassment. Defendants' also failed to exercise reasonable care, when they, among other things, failed to properly supervise S.G. on the playground equipment; allowed S.G. to play on a playground meant for older students instead of the kindergarten playground; failed to maintain a soft surface below the slide which would have better absorbed the hard impact of S.G.'s fall; and failed to warn S.G.'s parents of the dangerous condition of the playground, including that kindergartners could play on the upper-playground. Defendants have caused S.G. to suffer, *inter alia*, significant violations of his statutory, common law, and constitutional rights, loss of educational opportunity, severe physical and emotional distress and injury.

### **FIRST CLAIM FOR RELIEF**

#### **VIOLATIONS OF TITLE II OF ADA, 42 U.S.C. § 12101 *et seq.***

##### ***(Defendants Tehachapi USD and Superintendent Lynch)***

103. Plaintiff incorporates by reference all preceding paragraphs.

104. Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities[.]" 42 U.S.C. § 12101(b)(1)-2).

105. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

106. S.G. is and has been, at all times relevant herein, an individual with a disability under the ADA. 42 U.S.C. § 12102. His disabilities substantially limit one or more major life activities, including communicating, learning, neurological, and

1 interacting with others.

2 107. As a school-aged child who lives in the District, he is and was  
3 qualified to participate in Defendants' educational programs and services. 42 U.S.C.  
4 § 12131(2).

5 108. At all times relevant to this action, the District, and each school within  
6 the District, including Golden Hills, is and was a public entity within the meaning  
7 of the ADA. Defendant Superintendent Lynch is an official responsible for running  
8 and/or supervising the operations of the District. 42 U.S.C. § 12131(1).

9 109. At all times relevant to this action, the District, and each school within  
10 the District, including Golden Hills, were and are recipients of federal and state  
11 funding.

12 110. The acts and omissions of the District and Superintendent Lynch in his  
13 official capacity as described above, which include the acts and omissions of  
14 Golden Hills school officials and employees, have and are violating Plaintiff's  
15 rights under the ADA, 42 U.S.C. § 12132, and its implementing regulations, 28  
16 C.F.R. Pt. 35, by discriminating against Plaintiff on the basis of his disabilities,  
17 including by:

- 18 a. Failing to make reasonable modification to policies, practices, and  
19 procedures avoid discrimination against S.G.;
- 20 b. Utilizing methods of administration that have the effect of defeating or  
21 substantially impairing the accomplishments of the objectives of  
22 Defendants' programs, services and activities with respect to S.G.; and
- 23 c. Denying S.G. an opportunity to participate in and benefit from  
24 educational services that is equal to that afforded to other students.

25 111. In addition, through the acts and omissions of the District and  
26 Superintendent Lynch in his official capacity as described above, which include the  
27 acts and omissions of Golden Hills school officials and employees, have and are  
28 violating Plaintiff's rights under the ADA, 42 U.S.C. § 12132, and its implementing

1 regulations, 28 C.F.R. Pt. 35 by subjecting S.G. to ongoing disability-based  
2 harassment that is so severe and pervasive that it created a hostile learning  
3 environment.

4 112. The District, Superintendent Lynch in his official capacity, District  
5 officials and employees, including but not limited to Golden Hills school officials  
6 and employees, had actual knowledge that Plaintiff was being harassed at Golden  
7 Hills by J. on account of his disabilities and that J.'s peer disability harassment of  
8 Plaintiff was so severe, pervasive, and offensive that it effectively deprived Plaintiff  
9 of the right and full and equal access to the educational benefits, opportunities,  
10 services, programs, and activities offered by the District.

11 113. The District, Superintendent Lynch in his official capacity, District  
12 officials and employees, including but not limited to Golden Hills school officials  
13 and employees, acted with deliberate indifference to this known peer disability  
14 harassment of Plaintiff at Golden Hills. The response of District officials and  
15 employees, including but not limited to Golden Hills school officials and  
16 employees, to the known peer disability harassment of Plaintiff at Golden Hills was  
17 clearly unreasonable in light of all the known circumstances.

18 114. The deliberate indifference of the District, Superintendent Lynch in his  
19 official capacity, District officials and employees, including but not limited to  
20 Golden Hills school officials and employees, to the known peer disability  
21 harassment of Plaintiff at Golden Hills was the actual, direct, and proximate cause  
22 of the injuries suffered by Plaintiff as alleged herein.

23 115. Defendants committed the acts and omissions alleged herein with  
24 intent and/or deliberate indifference to S.G.'s rights. Defendants have further  
25 demonstrated a deliberate indifference that harm to Plaintiff's federally protected  
26 rights under the ADA was substantially likely, and failed to act upon that likelihood.

27 116. Defendants at all times have knowns or should have known that S.G.  
28 was a student with disabilities and required modifications.



117. The acts and omissions of the District and Superintendent Lynch in his official capacity as described above, which include the acts and omissions of Golden Hills school officials and employees, have caused and will continue to cause S.G. to suffer irreparable harm, and he has no adequate remedy at law.

118. Further, as a direct and proximate result of Defendants aforementioned acts and omissions, S.G. has suffered injury as alleged herein, including but not limited to, denial of the benefits of a public education. Moreover, as direct and proximate result of the foregoing, S.G. has suffered, and continues to suffer, among other things, physical harm, emotional harm, humiliation, hardship and anxiety, loss of his civil rights, and the loss of equal educational opportunities solely on the basis of his disability.

119. Pursuant to 42 U.S.C. §§ 12133 and 12205, Plaintiff seeks declaratory and injunctive relief, damages, and reasonable attorneys' fees and costs incurred in bringing this action as appropriate and permitted by law.

## **SECOND CLAIM**

### **VIOLATIONS OF SECTION 504 OF THE REHABILITATION ACT,**

#### **29 U.S.C. §§ 794, *et seq.***

#### ***(Defendants Tehachapi USD and Superintendent Lynch)***

120. Plaintiff incorporates by reference all preceding paragraphs.

121. Section 504 provides that “[n]o otherwise qualified individual with a disability in the United States. . . shall, solely by reason of [their] disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .” 29 U.S.C. § 794.

122. Plaintiff S.G. is and has been at all times relevant herein, a qualified individual with a disability within the meaning of Section 504. His disabilities substantially limit one or more major life activities, including communicating, learning, neurological, and interacting with others.

123. Defendants are recipients of federal funding.

124. As a school-aged child who lives in the District, he is and was otherwise qualified to participate in Defendants' programs and services and therefore meets essential eligibility requirements. *See* 29 U.S.C. § 794(b); 28 C.F.R. § 41.32.

125. At all times relevant to this action, the District, and each school within the District, including Golden Hills, were and are recipients of federal and state funding.

126. At all times relevant to this action, Defendants operated a "program or activity" within the meaning of Section 504.

127. The acts and omissions of the District and Superintendent Lynch in his official capacity as described above, which include the acts and omissions of Golden Hills school officials and employees, violated and are violating Plaintiff's rights under Section 504 by discriminating against Plaintiff solely by reason of his disabilities.

128. Defendants' acts and omissions as herein alleged have excluded and denied Plaintiff the benefits of their programs and services solely by reason of his disabilities. Solely by reason of his disabilities, S.G. has been excluded from participation in, denied the benefit of, and subjected to discrimination in his attempts to receive meaningful and equal access to the facilities, programs, services, and activities offered by Defendants in violation of Section 504. 29 U.S.C. § 794, *et seq.*, and its implementing regulations at 34 C.F.R. Pt. 104 (U.S. Department of Education) and 28 C.F.R. 42.501 *et seq.* (U.S. Department of Justice).

129. The Defendants' acts and omissions violating S.G.'s rights under the ADA also violate his rights under Section 504 (*see* First Claim for Relief, *supra*). Defendants' acts and omissions have also violated Section 504 by subjecting S.G. to ongoing disability-based harassment that is so severe and pervasive that it

1 created a hostile learning environment.

2 130. The District, Superintendent Lynch in his official capacity, District  
3 officials and employees, including but not limited to Golden Hills school officials  
4 and employees, had actual knowledge that Plaintiff was being harassed at Golden  
5 Hills by J. on account of his disabilities and that J.'s peer disability harassment of  
6 Plaintiff was so severe, pervasive, and offensive that it effectively deprived Plaintiff  
7 of the right and full and equal access to the educational benefits, opportunities,  
8 services, programs, and activities offered by the District.

9 131. The District, Superintendent Lynch in his official capacity, District  
10 officials and employees, including but not limited to Golden Hills school officials  
11 and employees, acted with deliberate indifference to this known peer disability  
12 harassment of Plaintiff at Golden Hills. The response of District officials and  
13 employees, including but not limited to Golden Hills school officials and  
14 employees, to the known peer disability harassment of Plaintiff at Golden Hills was  
15 clearly unreasonable in light of all the known circumstances.

16 132. The deliberate indifference of the District, Superintendent Lynch in his  
17 official capacity, District officials and employees, including but not limited to  
18 Golden Hills school officials and employees, to the known peer disability  
19 harassment of Plaintiff at Golden Hills was the actual, direct, and proximate cause  
20 of the injuries suffered by Plaintiff as alleged herein.

21 133. Defendants committed the acts and omissions alleged herein with  
22 intent and/or deliberate indifference to S.G.'s rights. Defendants have further  
23 demonstrated a deliberate indifference that harm to Plaintiff's federally protected  
24 rights under Section 504 was substantially likely, and failed to act upon that  
25 likelihood.

26 134. Defendants at all times have knowns or should have known that S.G.  
27 was a student with disabilities and required modifications.

28 135. The acts and omissions of the District and Superintendent Lynch in his

1 official capacity as described above, which include the acts and omissions of  
 2 Golden Hills school officials and employees, have caused and will continue to  
 3 cause S.G. to suffer irreparable harm, and he has no adequate remedy at law.

4 136. Further, as a direct and proximate result of Defendants aforementioned  
 5 acts and omissions, S.G. has suffered injury as alleged herein, including but not  
 6 limited to, denial of the benefits of a public education. Moreover, as direct and  
 7 proximate result of the foregoing, S.G. has suffered, and continues to suffer, among  
 8 other things, physical harm, emotional harm, humiliation, hardship and anxiety, loss  
 9 of his civil rights, and the loss of equal educational opportunities solely on the basis  
 10 of his disability.

11 137. Pursuant to 29 U.S.C. § 794(a), Plaintiff seeks declaratory and  
 12 injunctive relief, damages, and reasonable attorneys' fees and costs incurred in  
 13 bringing this action as appropriate and permitted by law.

### 14 **THIRD CLAIM**

#### 15 **Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681 – 1688** 16 ***(Against Defendants Tehachapi USD and Superintendent Lynch)***

17 138. Plaintiff incorporates by reference all preceding paragraphs.

18 139. Title IX states that “No person in the United States shall, on the basis  
 19 of sex, be excluded from participation in, be denied the benefits of, or be subjected  
 20 to discrimination under any education program or activity receiving Federal  
 21 financial assistance.” U.S.C.A. § 1681 (West). An educational institution’s failure to  
 22 address student-to-student gender harassment is a violation of Title IX.

23 140. At all times relevant to this action, Defendants were recipients of  
 24 federal funding and were an educational institution within the meaning of Title IX.  
 25 U.S.C.A. § 1681

26 141. The harassment faced by Plaintiff in which his arm was broken and  
 27 knocked unconscious by his peers on the basis of his perceived gender identity was  
 28 so severe that Plaintiff became suicidal and had to stop attending in-person classes.

1           142. The harassment faced by S.G. was so severe, pervasive, and  
2 objectively offensive that it effectively barred him from accessing his educational  
3 opportunities or benefits.

4           143. Defendants were informed several times by both S.G. and his parents  
5 of the peer-to-peer harassment.

6           144. In engaging in and performing the acts, omissions, and conduct alleged  
7 above, employees of the District, who at minimum had authority to address the  
8 harassment faced by S.G. and to institute corrective measures on behalf of the  
9 District, had knowledge of the peer-on-peer harassment and discrimination alleged  
10 herein and failed to adequately respond.

11           145. Defendants were deliberately indifferent to the harassment to the  
12 extreme of blaming S.G. for the harassment and telling his parents that he needed to  
13 be less “soft.”

14           146. Defendants failed to follow their own policies with regard to the  
15 investigation of the peer-on-peer gender-based harassment complaint.

16           147. Moreover, the response of the District and its employees to the  
17 harassing and discriminatory conduct was clearly unreasonable and ineffective in  
18 light of the known circumstances.

19           148. As an actual, direct, and proximate result of the wrongful conduct of  
20 Defendants, each of them, alleged herein, S.G. is entitled to recover general and  
21 special damages, including but not limited to severe emotional injuries and distress,  
22 medical expenses.

23           149. Plaintiff seeks declaratory and injunctive relief, damages, and pursuant  
24 to 20 U.S.C. §§ 1681-1688, and 42 U.S.C. § 1988 reasonable attorneys’ fees and  
25 costs incurred in bringing this action as appropriate and permitted by law.

26 //

27 //

28 //

**FOURTH CLAIM**

**Violation of the Fourteenth Amendment to the United States Constitution  
Equal Protection Against Discrimination based on Gender, 42 U.S.C. § 1983  
(Against Defendants Bailey and Spoden)**

150. Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.

151. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which is actionable under 42 U.S.C. section 1983, prohibits state actors from depriving individuals of their constitutional right to equal protection.

152. Defendants, acting under the color of state law, have violated Plaintiff's rights under the Equal Protection clause by creating a hostile and discriminatory environment based on Plaintiff's gender and disability.

153. Defendants' conduct as described herein violated Plaintiff's constitutional rights under the Equal Protection Clause of the Fourteenth Amendment to be free of gender and disability-based harassment

154. As a direct and proximate result of Defendants' unlawful actions as described herein, Plaintiff has suffered significant harm, including emotional distress, reputational damage, and loss of opportunities.

155. Defendants' acted with deliberate indifference with respect to the gender and disability-based peer-to-peer harassment suffered by Plaintiff.

**FIFTH CLAIM FOR RELIEF**

**VIOLATIONS OF CALIFORNIA GOVERNMENT CODE § 11135 *et seq.*  
(Defendants Tehachapi Unified School District and Superintendent Lynch)**

156. Plaintiff incorporates by reference each all preceding paragraphs.

157. California Government Code § 11135 and the regulations promulgated thereunder prohibit discrimination under, and the denial of full and equal access to the benefits of, state-funded programs and activities on the basis of sex or

1 disability. Specifically, California Government Code § 11135 provides that “No  
2 person in the State of California shall, on the basis of sex [or] disability [], be  
3 unlawfully denied full and equal access to the benefits of, or be unlawfully  
4 subjected to discrimination under, any program or activity that is conducted,  
5 operated, or administered by the state or by any state agency, is funded directly by  
6 the state, or receives any financial assistance from the state.” Cal. Gov’t Code §  
7 11135.

8 158. Violations of the ADA constitute violations of Government Code §  
9 11135(b).

10 159. The District, and each school within the District, including Golden  
11 Hills, is a state agency that receives state financial assistance for purposes of  
12 California Government Code Section 11135.

13 160. At all times relevant to this action, Plaintiff S.G. was and is a qualified  
14 individual within the meaning of California law. Cal. Gov’t Code § 12926. As a  
15 student with disabilities and perceived gender nonconforming attributes/sex, S.G. is  
16 entitled to California law protections against discrimination on the basis of sex  
17 and/or disability. *Id.*

18 161. The acts and omissions of the District and Superintendent Lynch,  
19 which include the acts and omissions of Golden Hill school officials and  
20 employees, have violated and are violating Plaintiff’s rights under California  
21 Government Code § 11135 by discriminating on the basis of his disabilities and sex.  
22 Further, Defendants’ acts and omissions, including its discriminatory practices as  
23 herein alleged denied and continue to deny S.G., *inter alia*, full and equal access to  
24 the services, programs and activities offered by Defendants to students at Golden  
25 Hills in violation of California Government Code § 11135.

26 162. Defendants have also violated and are violating Government Code  
27 Section § 11135(b) in that the conduct alleged herein constitutes a violation of the  
28



1 ADA and the regulations promulgated thereunder. (*see* First Claim for Relief,  
2 *supra*).

3 163. The District, Superintendent Lynch in his official capacity, District  
4 officials and employees, including but not limited to Golden Hills school officials  
5 and employees, had actual knowledge Plaintiff was being harassed at Golden Hills  
6 by J. on account of his disabilities and sex and that J.'s peer disability and sex  
7 harassment of Plaintiff was so severe, pervasive, and offensive that it effectively  
8 deprived Plaintiff full and equal access to the educational benefits, programs,  
9 activities, and opportunities offered by the District.

10 164. Defendants subjects S.G. to disability and sex-based harassment that  
11 was so severe and pervasive that it creates a hostile learning environment.

12 165. Defendants have also violated Government Code § 11135 by  
13 discriminating against S.G. in violation of the ADA (*see* First Claim for Relief,  
14 *supra*).

15 166. The District, Superintendent Lynch in his official capacity, District  
16 officials and employees, including but not limited to Golden Hills school officials  
17 and employees, acted with deliberate indifference to this known peer disability and  
18 sex harassment of Plaintiff at Golden Hills. The response of District officials and  
19 employees, including but not limited Golden Hills school officials and employees,  
20 to the known peer disability and sex harassment of Plaintiff at Golden Hills was  
21 clearly unreasonable in light of all the known circumstances.

22 167. The deliberate indifference of the District, Superintendent Lynch in his  
23 official capacity, District officials and employees, including but not limited to  
24 Golden Hills school officials and employees, to the known peer disability and sex  
25 harassment of Plaintiff at Golden Hills was the actual, direct, and proximate cause  
26 of the injuries suffered by Plaintiff as alleged herein.

27 //  
28

168. Defendants actions as alleged herein have caused and will continue to S.G. to suffer irreparable harm, and he has no adequate remedy at law. Because Defendants' discriminatory conduct is ongoing, both declaratory and injunctive relief are appropriate. S.G. is also entitled and seeks reasonable attorneys' fees and costs incurred in bringing this action.

## **SIXTH CLAIM FOR RELIEF**

### **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN PUBLIC SCHOOL, Cal. Ed. Code §§ 200, 201, 220, 230 (*Defendant Tehachapi USD and Superintendent Lynch*)**

169. Plaintiff incorporates by reference the above paragraphs as though fully set forth herein.

170. California Education Code § 200 states in relevant part that “[i]t is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, [or] gender expression...equal rights, and opportunities in the educational institutions of the state.”

171. California Education Code § 201(a) states in relevant part that “[a]ll pupils have the right to participate fully in the educational process, free from discrimination and harassment.”

172. California Education Code § 201 (f) states in relevant part that “California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.” (Cal. Ed. Code § 201(b).) Further, “[i]t is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity.”

173. California Education Code § 220 prohibits, *inter alia*, discrimination on the basis of disability “in any program or activity conducted by an educational

1 institution that receives, or benefits from, state financial assistance or enrolls pupils  
2 who receive state student financial aid.”

3 174. California Education Code § 230 prohibits “on the basis of sex,  
4 harassment or other discrimination among persons, including, but not limited to,  
5 students.”

6 175. California school districts have an affirmative duty to adopt procedures  
7 for preventing acts of bullying based upon, in relevant part, disability and gender.  
8 (Cal. Ed. Code § 234, *et seq.*)

9 176. The California Education Code defines “bullying” as “[a]ny severe or  
10 pervasive physical or verbal conduct...directed toward one or more pupils that has  
11 or can be reasonably predicted to have the effect of ... [c]ausing a reasonable pupil  
12 to experience a substantially detrimental effect on the pupil's physical or mental  
13 health.” (Cal. Ed. Code § 48900 (r).)

14 177. S.G. is an individual with a disability within the meaning of California  
15 Education Code § 220.

16 178. Defendant District receives financial assistance from the State of  
17 California.

18 179. Defendants’ failure to have policies in place to appropriately  
19 investigate and address complaints of bullying encouraged bullying of S.G. and  
20 created a hostile environment of which S.G. was a victim.

21 180. Defendants’ failure to prevent discrimination and harassment against  
22 S.G. on the basis of gender and disability, and failure to eliminate a hostile  
23 environment by addressing the obvious risk of their dangerous practice to not  
24 investigate complaints of bullying were clear and substantial factors directly  
25 contributing to S.G.’s injuries.

26 181. By their actions or inactions, as described above, and in failing to  
27 enact an adequate formal or informal policy to ensure that the District is providing a  
28 learning environment free from discrimination, harassment, and bullying on the

1 basis of gender and disability, Defendant Lynch denied Plaintiff's rights under  
 2 Sections 200, 201, 220, and 230 *et seq.* of the California Education Code and the  
 3 regulations promulgated thereunder.

4 182. Defendants' actions as alleged herein have caused and will continue to  
 5 S.G. to suffer irreparable harm, and he has no adequate remedy at law. Because  
 6 Defendants' discriminatory conduct is ongoing, both declaratory and injunctive  
 7 relief are appropriate. S.G. is also entitled and seeks reasonable attorneys' fees and  
 8 costs incurred in bringing this action.

9 **SEVENTH CLAIM FOR RELIEF**

10 **DANGEROUS CONDITION OF PUBLIC PROPERTY,**

11 **Cal. Gov. Code § 835, *et seq.***

12 ***(Defendants Tehachapi USD and Superintendent Lynch)***

13 183. Plaintiff incorporates by reference the above paragraphs as though  
 14 fully set forth herein.

15 184. "A public entity is liable for injury caused by a dangerous condition of  
 16 its property if the plaintiff establishes that the property was in a dangerous  
 17 condition at the time of the injury, that the injury was proximately caused by the  
 18 dangerous condition, that the dangerous condition created a reasonably foreseeable  
 19 risk of the kind of injury which was incurred, and that either: [¶] (a) A negligent or  
 20 wrongful act or omission of an employee of the public entity within the scope of his  
 21 employment created the dangerous condition; or [¶] (b) The public entity had actual  
 22 or constructive notice of the dangerous condition under Section 835.2 a sufficient  
 23 time prior to the injury to have taken measures to protect against the dangerous  
 24 condition." (Cal. Gov. Code § 835.)

25 185. "[A] public entity may be liable for a dangerous condition of public  
 26 property even when the immediate cause of a plaintiff's injury is a third party's  
 27 negligent or illegal act (such as a motorist's negligent driving), if some physical  
 28 characteristic of the property exposes its users to increased danger from third party

1 negligence or criminality.” (*Castro v. City of Thousand Oaks* (2015) 239  
2 Cal.App.4th 1451, 1457-58.).

3 186. S.G. was exposed to and harmed by a dangerous condition created by  
4 Defendants. Defendants own and control the property on which S.G. was injured.

5 187. Defendants and employees created an objectively dangerous condition  
6 by failing to properly address and investigate S.G.’s complaints of bullying,  
7 harassment, and discrimination.

8 188. This failure created a reasonable foreseeable risk that S.G. would  
9 continue to bullied, harassment, and discriminated against without repercussion.

10 189. The negligent, reckless, and/or wrongful conduct of Defendants  
11 further exacerbated this dangerous condition that led to S.G.’s injuries.

12 190. S.G. was harmed by the failure to address and investigate complaints  
13 of bullying, harassment, and discrimination because it allowed J. to continue to  
14 harass him, including J pushing S.G. off the swings and slide.

15 191. The practice of failing to address and investigate complaints of  
16 bullying, harassment, and discrimination created a reasonable foreseeable risk that  
17 students would get hurt.

18 192. The practice of failing to address and investigate complaints of  
19 bullying, harassment, and discrimination was a clear and substantial factor in  
20 causing S.G.’s injuries.

21 193. Defendants and employees further created an objectively dangerous  
22 condition by failing to maintain a soft soil surface below the slide from which S.G.  
23 was pushed which would have better absorbed the hard impact of his fall.

24 194. The failure to maintain a soft soil surface was a clear and substantial  
25 factor in causing S.G.’s injuries.

26 195. Plaintiff seeks declaratory and injunctive relief, damages, and  
27 reasonable attorneys’ fees and costs incurred in bringing this action as appropriate  
28 and permitted by law.

**EIGHTH CLAIM FOR RELIEF**  
**VIOLATION OF MANDATORY DUTY**  
**California Government Code § 815.6**  
***(Against Defendant Tehachapi USD)***

196. S.G. incorporates by reference each and every allegation contained in the foregoing paragraphs.

197. California Government Code § 815.6 provides for liability against a public entity when:

- a) The entity violates a mandatory duty imposed by an enactment;
- b) Designed to protect against the risk of a particular injury;
- c) The plaintiff is in the class of persons protected by the enactment;
- d) The violation proximately caused the injury to the plaintiff; and
- e) The public entity did not exercise reasonable diligence in discharging its duty established by the enactment.

198. An enactment includes a federal or state constitutional provision, statute, charter provision, ordinance, or properly adopted regulation.

199. The statutes cited throughout the various causes of action in this Complaint are all enactments within the meaning of California Civil Code § 815.6.

200. S.G. was and is in the class of persons protected by these enactments.

201. The aforementioned enactments constitute mandatory duties within the meaning of California Civil Code § 815.6 and were designed to prevent the kind of injuries alleged herein.

202. Defendants, as described in this Complaint, did not exercise reasonable diligence in discharging their duty established by the enactments enumerated above to refrain from violating Plaintiff's constitutional and statutory rights.

203. Plaintiff seeks equitable, declaratory and injunctive relief and reasonable attorneys' fees and costs incurred in bringing this action as appropriate and permitted by law.

**NINTH CLAIM**

**NEGLIGENT SUPERVISION, HIRING, OR RETENTION**

***(Defendants Tehachapi USD, Superintendent Lynch, Bailey, and Spoden)***

204. Plaintiff incorporates by reference the above paragraphs as though fully set forth herein.

205. Defendants owed a duty of care to S.G. to adequately and properly investigate, screen, hire, train, monitor, place, evaluate, and supervise their instructors, faculty, employees, and contractors in order to protect their students from harm caused by other students on school property.

206. Defendants had a legal duty to exercise reasonable care in the supervising “special needs” students in its charge pursuant to California Education code Section 44807 and may be held liable for injuries proximately caused by the failure to exercise such case.

207. Plaintiff is a “special needs” student whom are particularly vulnerable and dependent upon the Defendants, who, correspondingly, had control over Plaintiff’s welfare.

208. Defendants’ breached their duties to S.G. when they failed to supervise Plaintiff and District employees while Plaintiff was on District grounds during the harassment and bullying described herein and failed to ensure the teachers and staff were adequately trained and provided proper supervision.

209. Defendants were aware of their probable dangerous consequences of their conduct, and willfully and deliberately failed to avoid those consequences.

210. Defendants Bailey and Spoden directed and/or participated substantially in the events described herein against S.G. and/or knew of the acts and/or omissions of their subordinates and failed to act to prevent them. Defendants knew, or should have known, it was highly probably that harm would result from their actions and/or omissions described above.

//



211. California Government Code § 815.2 provides that a public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of their employment.

212. California Government Code section 820 provides that a public employee is liable for injury caused by his act or omission to the same extent as a private person.

213. The District and Superintendent Lynch in his official capacity were at all times relevant times the employers of Defendant Bailey and Defendant Spoden.

214. Defendant Bailey and Defendant Spoden committed the negligent supervision described herein while acting within the scope of their employment. The District and Superintendent Lynch are therefore vicariously liable for these acts.

215. As a direct and proximate result of the actions of Defendants herein, Plaintiff has and continues to sustain damages according to proof.

### TENTH CLAIM

## NEGLIGENCE

*(Defendants Tehachapi USD, Superintendent Lynch, Bailey, and Spoden)*

216. Plaintiff incorporates by reference the above paragraphs as though fully set forth herein.

217. California law has long imposed on school authorities a duty to supervise at all times the conduct of children on school grounds and to enforce those rules and regulations necessary for their protection.

218. Further, compulsory education laws create a special relationship between students and Defendants, and students have a constitutional guarantee to a safe, secure, and peaceful school environment.

219. As set forth above, Defendants have breached their duties, statutory and otherwise, to provide Plaintiffs with a learning environment free from discrimination and harassment.

1           220. Defendants, and each of them, failed to acknowledge unsafe  
2 conditions, and therefore failed to guarantee safe surroundings in an environment in  
3 which S.G. was not free to leave, specifically including, but not limited to, failing  
4 to appropriately respond to complaints of ongoing, severe, and pervasive bullying  
5 and harassment by J.

6           221. Defendants also failed to properly supervise S.G. while on the  
7 playground, including allowing him to play on the upper-playground, not intended  
8 for kindergarteners.

9           222. Defendants were aware of the probable dangerous consequences  
10 of their conduct, and willfully and deliberately failed to avoid those consequences.  
11 Defendants knew, or should have known, it was highly probable that harm would  
12 result from their actions described herein.

13           223. As the actual and proximate cause of Defendant's negligence,  
14 Plaintiff suffered and continues to suffer physical abuse and severe emotional  
15 distress.

16           224. California Government Code section 820 provides that a public  
17 employee is liable for injury caused by his act or omission to the same extent as a  
18 private person.

19           225. California Government Code section 815.2 provides that a public  
20 entity is liable for injury proximately caused by an act or omission of an employee  
21 of the public entity within the scope of his or her employment.

22           226. The District, a public entity, was at all relevant times the employer of  
23 Defendant Bailey and Defendant Spoden.

24           227. Defendant Bailey and Defendant Spoden committed the acts described  
25 herein while acting within the scope of their employment with the District of  
26 educating, disciplining, and supervising S.G.

27           228. The District is therefore vicariously liable for the actions of its  
28 employee acting within the scope of their employment.

229. As a direct and proximate result of the actions of Defendants herein, Plaintiff has and continues to sustain damages according to proof.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff S.G. requests that the Court grant the following relief:

1. For an order declaring that the Defendants have been deliberately indifferent to known acts of disability and gender-based discrimination and peer-to-peer harassment of S.G, and that this discrimination and harassment was so severe, pervasive, and objectively offensive that it effectively barred Plaintiff access to an educational opportunity or benefit in violation of the federal and state statutes listed herein.

2. A declaration that Defendants' conduct, as alleged herein, has violated and continues to violate Title II of the ADA; Section 504 of the Rehabilitation Act; Title IX of the Education Amendments Act of 1972; Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; California Government Code § 11135; California Education Code §§ 200, 201, 220, and 230; California Government Code § 835; and California Government Code § 815.6, and state common law torts.

3. That this Court enjoin Defendants their successors in office, agents, employees and assigns, and all persons acting in concert with them, to at minimum: stop engaging in the unlawful acts described herein, and to develop policies and procedures for ending any such unlawful acts, including but not limited to the following:

- a. Require the District to implement mandatory and effective training programs for District faculty, staff, and students on issues relating to disability and gender-based discrimination and methods to intervene to stop students from harassing other students based on their disabilities and/or gender;

//

- b. Require the District to adopt policies with specific guidelines for instructing teachers, security guards, bus drivers, yard aides, school nurses, administrators, and/or other school staff about how to address complaints by students who have been taunted, harassed, or discriminated against because of their disabilities and/or gender; and
- c. Require the District to maintain statistical data concerning each complaint of harassment based on a student's disability and/or gender made by a student or staff member, as well as the specific action District principals, assistant principals, teachers, school nurses, administrators, and other staff took to resolve each complaint.

4. That this Court retain jurisdiction of this case until Defendants have fully complied with the orders of this Court, and until there are reasonable assurances that Defendants will continue to comply in the future, absent continuing jurisdiction.

5. That this Court award S.G. nominal, general, compensatory, punitive, statutory, special and consequential damages in an amount according to proof as permitted by statute and at law.

6. That this Court award S.G. medical expenses.

7. That this Court award to S.G. any other damages as may be allowable under federal and state laws set forth above.

8. That this Court award Plaintiff all litigation expenses and costs of this proceeding, and all reasonable attorneys' fees as provided by law.

//

//


//

//

9. Such other and further relief as the Court may find just and proper.

Dated: February 21, 2025

BARAJAS & RIVERA

By: \_\_\_\_\_

Maronel Barajas


Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

S.G. hereby demands a jury trial.

Dated: February 21, 2025

BARAJAS & RIVERA

By: \_\_\_\_\_

Maronel Barajas

Attorneys for Plaintiff